

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

**CORY HEMRICH and COOPER  
OGBURN, individually and on behalf of  
all those similarly situated,**

Case No. 3:15-cv-445

**Plaintiffs,**

**v.**

**DRAFTKINGS, INC., a Delaware  
corporation,**

**Defendant.**

**DECLARATION OF TIM DENT IN SUPPORT OF**  
**DEFENDANT DRAFTKINGS, INC.’S PETITION TO COMPEL ARBITRATION**  
**AND DISMISS PROCEEDINGS**

## DECLARATION OF TIM DENT

I, Tim Dent, declare and state as follows:

1. I am the Chief Financial Officer at DraftKings, Inc. ("DraftKings"). I have personal knowledge of the facts set forth in this Declaration and if called as a witness, I could and would competently testify to these facts.

2. Attached as Exhibit A is a true and correct copy of DraftKings' Terms of Use that were in effect as of August 12, 2014, and which have been publicly available and accessible on the DraftKings website (even without registering for a DraftKings account) since that date.

3. Before making a deposit or entering any fantasy sports contests, all DraftKings customers are required to establish an account by registering with DraftKings through a "Sign Up" webpage that requires all first-time customers to signify their agreement to the Terms of Use and Privacy Policy. This version of the webpage has been in use at least since August 12, 2014. A screen shot of an example of this "Sign Up" webpage appears below:

**DRAFTKINGS** Daily Fantasy Sports for Cash

Lobby My Lineups My Contests My Account Promotions

### Sign Up

#### Sign Up Now

[Already have a DraftKings Account?](#)

**Username**

**\* Email**

**\* Password**

**\* Confirm Password**

**\* Country**

United States ▼

**\* State/Province**

▼ [Is your state missing?](#)

☐ I agree to the [Terms of Use](#) and the [Privacy Policy](#).

☐ I confirm that I am at least 18 years of age. Must be 19 years of age in Alabama and Nebraska.

**REGISTER** »

**WHY DRAFTKINGS?**

- ◆ Play FREE and Win Cash every day!
- ◆ Fast and easy to play - draft your team in just 2 minutes
- ◆ Play 1-on-1, or win more vs. a bigger pool of players (5-man, 10-man, or tournaments)
- ◆ Instant, secure deposits and easy withdrawals
- ◆ We are a US-based skill games company - our contests are operated 100% legally

4. On the “Sign Up” webpage, all customers are required to click the box “I agree to the Terms of Use and the Privacy Policy” before establishing an account with DraftKings. As depicted above, the phrase “Terms of Use” appears in green text and is a hyperlink. Upon clicking this hyperlink, customers are immediately directed to a webpage that presents the “Terms of Use” (as mentioned earlier, a complete copy of which is attached as Exhibit A).

5. A customer cannot register or access DraftKings’ service unless he first clicks the box “I agree to the Terms of Use and the Privacy Policy.” If the customer fails to click that box, the webpage will reload, and the customer is asked to “Please accept the Terms & Conditions.” A screenshot of an example of this webpage appears below, with email information redacted:

**DRAFTKINGS** Daily Fantasy Sports for Cash

Lobby My Lineups My Contests My Account Promotions

## Sign Up

### Sign Up Now

Please accept the Terms & Conditions.

[Already have a DraftKings Account?](#)

**Username**  
draftqueen

**\* Email**  
[REDACTED]

**\* Password**  
[REDACTED]

**\* Confirm Password**  
[REDACTED]

**\* Country**  
United States ▼

**\* State/Province**  
▼ [Is your state missing?](#)

☐ I agree to the [Terms of Use](#) and the [Privacy Policy](#).

☒ I confirm that I am at least 18 years of age. Must be 19 years of age in Alabama and Nebraska.

**REGISTER** >>

#### WHY DRAFTKINGS?

- ◆ Play FREE and Win Cash every day!
- ◆ Fast and easy to play - draft your team in just 2 minutes
- ◆ Play 1-on-1, or win more vs. a bigger pool of players (5-man, 10-man, or tournaments)
- ◆ Instant, secure deposits and easy withdrawals
- ◆ We are a US-based skill games company - our contests are operated 100% legally

1           6.       After the customer has entered his desired username, email address, password,  
2 country, state, and clicked the boxes that (1) signify his agreement to the Terms of Use and Privacy  
3 Policy and (2) confirm that he is at least 18 years of age, he can click the button “Register” to  
4 complete his user profile, establish his account, and use DraftKings’ services.

5           7.       Attached as Exhibit B is a true and correct screenshot of DraftKings’ account records  
6 for plaintiff Cory Hemrich, which are kept in a database used to house customer account information  
7 as part of DraftKings’ regular and ordinary business record-keeping practices. (Plaintiff’s non-public  
8 personally identifiable information has been redacted to ensure his privacy.) DraftKings’ account  
9 records reflect that Mr. Hemrich created an account, and thus clicked the box “I agree to the Terms of  
10 Use and the Privacy Policy,” on October 7th, 2014 at 3:08 a.m.

11           8.       Attached as Exhibit C is a true and correct screenshot of DraftKings’ account records  
12 for plaintiff Cooper Ogborn, which are kept in a database used to house customer account  
13 information as part of DraftKings’ regular and ordinary business record-keeping practices.  
14 (Plaintiff’s non-public personally identifiable information has been redacted to ensure his privacy.)  
15 DraftKings’ account records reflect that Mr. Ogburn created an account, and thus clicked the box “I  
16 agree to the Terms of Use and the Privacy Policy,” on February 1, 2015 at 10:28 p.m.

17           9.       A customer may, at any point, withdraw his deposit money from his DraftKings  
18 account at no cost or penalty. DraftKings will credit back the original deposit amount with the  
19 payment methods used when depositing, and should any funds remain, DraftKings allows the  
20 customer to choose where those funds get sent. A screenshot of an example of this webpage appears  
21 below, with personal information redacted:

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**Account Information**  
Deposit  
**Withdraw**  
My Tickets  
Transaction History  
Preferences  
Free Bonus Offers

**IMPORTANT INFORMATION REGARDING WITHDRAWALS**  
There are a few things you need to know about how your withdrawal requests are processed. First, we credit back the payment methods used when depositing. Then we deliver any remaining funds to you via the selected payment method below. For examples and more information please review the "Withdrawal Information" section to the right of the page before contacting Customer Support.

**Amount**  
25.00 Min. \$20

**Send Remaining Funds By**  
☐ PayPal ☒ Check ☐ DWOLLA

**Mail Check To:**  
[Redacted]  
[Change](#)

**REQUEST WITHDRAWAL**

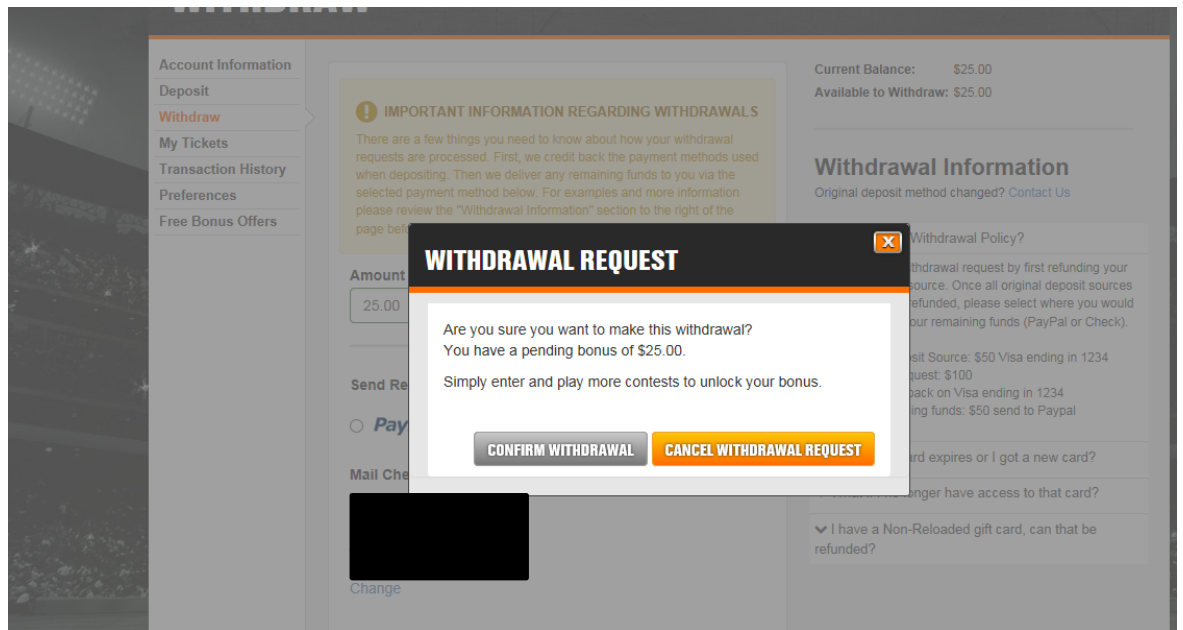
**Current Balance:** \$25.00  
**Available to Withdraw:** \$25.00

**Withdrawal Information**  
Original deposit method changed? [Contact Us](#)

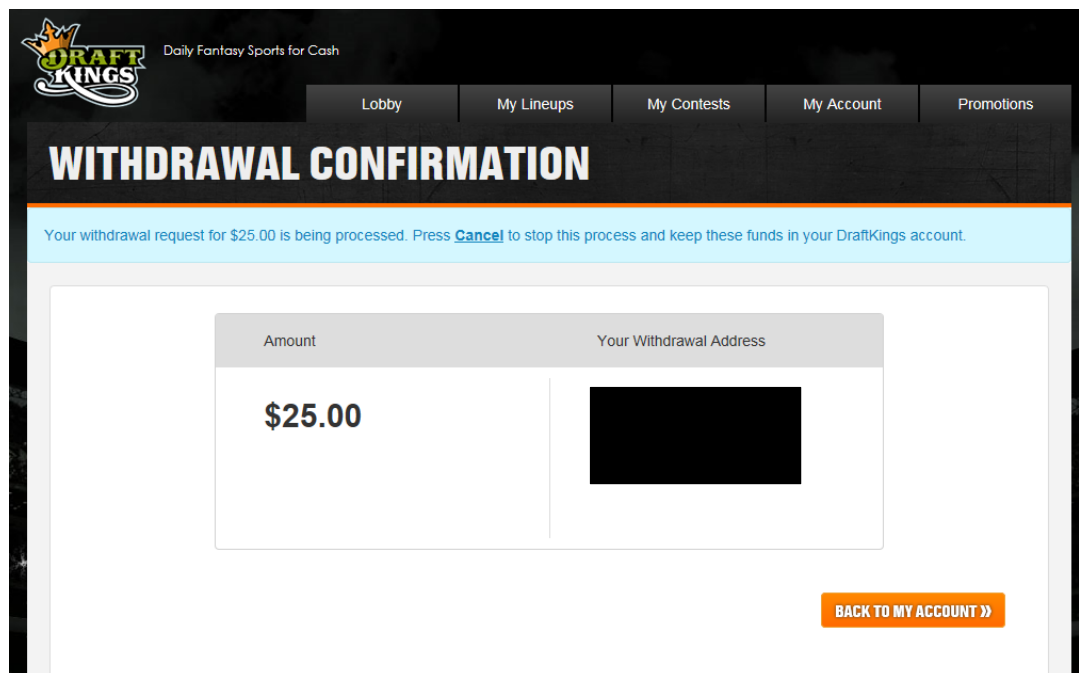
**What is your Withdrawal Policy?**  
We process a withdrawal request by first refunding your original deposit source. Once all original deposit sources have been fully refunded, please select where you would like us to send your remaining funds (PayPal or Check).  
**Example:**  
• Original Deposit Source: \$50 Visa ending in 1234  
• Withdraw Request: \$100  
• Refund: \$50 back on Visa ending in 1234  
• Send Remaining funds: \$50 send to Paypal

What if my card expires or I got a new card?  
What if I no longer have access to that card?  
I have a Non-Reloaded gift card, can that be refunded?

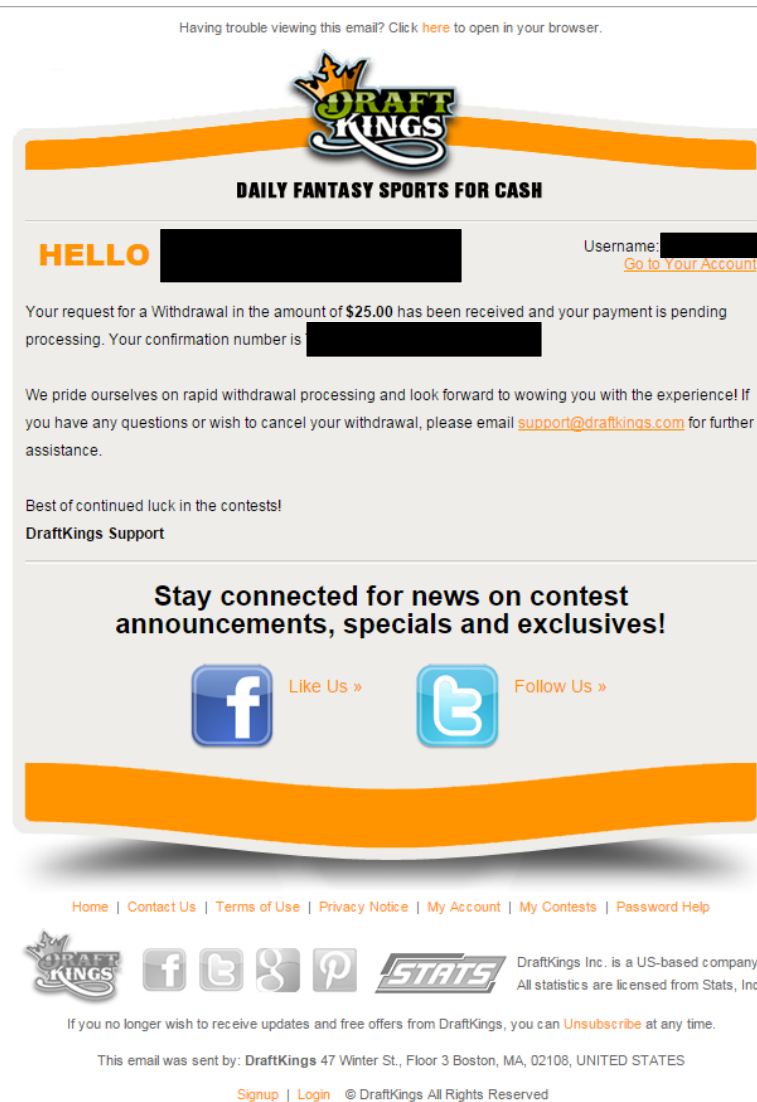
15           10. Once the customer completes the withdrawal request, a pop-up window will appear  
16 confirming the customer's desire to withdraw his funds from his DraftKings account. At the bottom  
17 of the pop-up window there are two different-colored buttons: "Confirm Withdrawal," and "Cancel  
18 Withdrawal Request." Further, the "Double Your Deposit" promotion is mentioned in the pop-up  
19 window, reminding the customer that he need only "enter and play more contests to unlock your  
20 bonus." A screen shot of an example of this webpage appears below (personal information redacted):



11. After the customer clicks the “Confirm Withdrawal” button, he will be redirected to a “Withdrawal Confirmation” webpage. A screen shot of an example of this webpage appears below, with personal information redacted:



12. The customer will also receive an email confirmation with a confirmation number from DraftKings that his “request for a Withdrawal in the amount of [X] dollars has been received and your payment is pending processing.” A screen shot of an example of this webpage appears below, with personal information redacted:



1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct. Executed this 23 day of June, 2015 at Boston, Massachusetts.

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# EXHIBIT A

# Terms of Use

(Last Updated 8/12/2014)

## IMPORTANT LEGAL NOTICE REGARDING TERMS OF USE OF DRAFTKINGS

IMPORTANT! PLEASE CAREFULLY READ THESE TERMS OF USE BEFORE USING DRAFTKINGS, AS THEY AFFECT YOUR LEGAL RIGHTS AND OBLIGATIONS.

## USER AGREEMENT

DraftKings owns and operates the Website that links to these Terms of Use. We are pleased to offer you access to our Website and the ability to participate in our fantasy sports contests of skill, other content, products, services, and promotions (collectively the "Services") that we may provide from our Website, subject to these Terms of Use (the "Terms of Use"), our privacy policy (the "Privacy Policy") and the Official Rules and Regulations for the applicable contests and promotions (the "Rules" or "Rules and Scoring," and together with the Terms of Use and the Privacy Policy, the "Agreements").

## CONSIDERATION

You agree to these Terms of Use by accessing or using the Website, registering for Services offered on the Website, or by accepting, uploading, submitting or downloading any information or content from or to the Website. IF YOU DO NOT AGREE TO BE BOUND BY ALL OF THESE TERMS OF USE, DO NOT USE THE WEBSITE. These Terms of Use constitute a legal agreement between you and DraftKings, and shall apply to your use of the Website and the Services even after termination.

## ELIGIBILITY

You must be at least 18 years of age to open an account, participate in contests, or win prizes offered by the Website. In jurisdictions, territories, and locations where the minimum age for permissible use of the Website is greater than 18 years old, you must meet the age requirement in your local jurisdiction or territory. You must be at least 19 years of age at time of contest registration if you are a legal resident of Alabama or Nebraska. Legal residents physically located in any of the 50 states and Washington DC, excluding Arizona, Iowa, Louisiana, Montana, and Washington are eligible to open an account and participate in contests offered by the Website. Legal residents of Arizona, Iowa, Louisiana, Montana, and Washington (the "Excluded States") are ineligible for prizes offered by the Website. Residents of the Excluded States are eligible to open and maintain accounts on the Website for use only in games that do not offer prizes. Legal residents of Canada are eligible to open an account and participate in contests offered by the Website.

You may establish only one account per person to participate in the Services offered on the Website. In the event DraftKings discovers that you have opened more than one account per person, in addition to any other rights that DraftKings may have, DraftKings reserves the right to suspend or terminate any or all of your accounts and terminate, withhold or revoke the awarding of any prizes. You are responsible for maintaining the confidentiality of your login names and passwords and you accept responsibility for all activities, charges, and damages that occur under your account. It shall be a violation of these Terms of Use to allow any other person to use your account to participate in any contest. If you have reason to believe that someone is using your account without your permission, you should contact us immediately. We will not be responsible for any loss or damage resulting from your failure to notify us of unauthorized use. If we request registration information from you, you must provide us with accurate and complete information and must update the information when it changes.

"Authorized Account Holder" is defined as the natural person 18 years of age or older who is assigned to an e-mail address by an Internet access provider, on-line service provider, or other organization (e.g., business, education institution, etc.) that is responsible for assigning e-mail addresses for the domain associated with the submitted e-mail address for registration on the Website. By inputting a payment method to participate in real money contests, the Authorized Account Holder hereby affirms that the Authorized Account Holder is the lawful owner of the payment method account used to make any deposit(s) on the Website. It shall be a violation of these Terms of Use for any

Authorized Account Holder to submit payment using any payment method that is not owned by the Authorized Account Holder.

DraftKings employees may use the Website, and will from time to time do so for the purpose of testing the site user experience, socializing and competing with customers to build community, and other reasonable and fair uses at the discretion of DraftKings.

### **CONTEST ENTRY**

Users will be able to visit the Website and view the games available for entry (the "Contests"). Each individual Contest that is not free to enter has an entry fee listed in US dollars. When you select to participate in a Contest and complete the entry process, the listed amount of US dollars will be debited from your DraftKings account.

### **REFUND POLICY**

All payments are final. No refunds will be issued. In the event of a dispute regarding the identity of the person submitting an entry, the entry will be deemed submitted by the person in whose name the account was registered.

### **CONDITIONS OF PARTICIPATION**

By entering a Contest, entrants agree to be bound by these Rules and the decisions of DraftKings, which shall be final and binding in all respects. The Company, at its sole discretion, may disqualify any entrant from a Contest, refuse to award benefits or prizes and require the return of any prizes, if the entrant engages in conduct the Company deems to be improper, unfair or otherwise adverse to the operation of the Contest or is in any way detrimental to other entrants. Improper conduct includes, but is not limited to:

- Falsifying personal information required to enter a Contest or claim a prize;
- Engaging in any type of financial fraud including unauthorized use of credit instruments to enter a Contest or claim a prize;
- Colluding with any other individual(s) or engaging in any type of syndicate play;
- Any violation of Contest rules or the Terms of Use;
- Accumulating points or prizes through unauthorized methods such as automated scripts, bots, or other automated means;
- Using automated means (including but not limited to harvesting bots, robots, parser, spiders or screen scrapers) to obtain, collect or access any information on the Website or of any User for any purpose.
- Any type of bonus abuse, abuse of the refer-a-friend program, or abuse of any other offers or promotions;
- Tampering with the administration of a Contest or trying to in any way tamper with the computer programs or any security measure associated with a Contest;
- Obtaining other entrants information and spamming other entrants; or
- Abusing the Website in any way.

Users further acknowledge that the forfeiture and/or return of any prize shall in no way prevent DraftKings from pursuing criminal or civil proceedings in connection with such conduct.

By entering into a Contest or accepting any prize, entrants, including but not limited to the winner(s), agree to indemnify, release and to hold harmless DraftKings, its parents, subsidiaries, affiliates and agents, as well as the officers, directors, employees, shareholders and representatives of any of the foregoing entities (collectively, the "Released Parties"), from any and all liability, claims or actions of any kind whatsoever, including but not limited to injuries, damages, or losses to persons and property which may be sustained in connection with participation in the Contest, the receipt, ownership, use or misuse of any prize or while preparing for, participating in and/or travelling to or from any prize related activity, as well as any claims based on publicity rights, defamation, or invasion of privacy. DraftKings may, in its sole and absolute discretion, require an Authorized Account Holder to execute a separate release of claims similar to the one listed above in this Paragraph as a condition of being awarded any prize or receiving any payout.

DraftKings is not responsible for: any incorrect, invalid or inaccurate entry information; human errors; postal delays/postage due mail; technical malfunctions; failures, including public utility or telephone outages; omissions, interruptions, deletions or defects of any telephone system or network, computer online systems, data, computer equipment, servers, providers, or software (including, but not limited to software and operating systems that do not permit an entrant to participate in a Contest), including without limitation any injury or damage to any entrant's or any other person's computer or video equipment relating to or resulting from participation in a Contest; inability to access the Website, or any web pages that are part of or related to the Website; theft, tampering, destruction, or unauthorized access to, or alteration of, entries and/or images of any kind; data that is processed late or incorrectly or is incomplete or lost due to telephone, postal issues, computer or electronic malfunction or traffic congestion on telephone lines or transmission systems, or the Internet, or any service provider's facilities, or any phone site or website or for any other reason whatsoever; typographical, printing or other errors, or any combination thereof.

DraftKings is not responsible for incomplete, illegible, misdirected or stolen entries. If for any reason a Contest is not capable of running as originally planned, or if a Contest, computer application, or website associated therewith (or any portion thereof) becomes corrupted or does not allow the proper entry to a Contest in accordance with the Terms of Use or applicable Contest rules, or if infection by a computer (or similar) virus, bug, tampering, unauthorized intervention, actions by entrants, fraud, technical failures, or any other causes of any kind, in the sole opinion of DraftKings corrupts or affects the administration, security, fairness, integrity, or proper conduct of a Contest, the Company reserves the right, at its sole discretion, to disqualify any individual implicated in such action and/or to cancel, terminate, extend, modify or suspend the Contest, and select the winner(s) from all eligible entries received. If such cancellation, termination, modification or suspension occurs, notification will be posted on the Website.

ANY ATTEMPT BY AN ENTRANT OR ANY OTHER INDIVIDUAL TO DELIBERATELY DAMAGE THE WEBSITE OR UNDERMINE THE LEGITIMATE OPERATION OF ANY CONTEST IS A VIOLATION OF CRIMINAL AND/OR CIVIL LAWS AND SHOULD SUCH AN ATTEMPT BE MADE, DRAFTKINGS RESERVES THE RIGHT TO SEEK DAMAGES AND OTHER REMEDIES FROM ANY SUCH PERSON TO THE FULLEST EXTENT PERMITTED BY LAW.

All entries become the property of DraftKings and will not be acknowledged or returned.

To be eligible to enter any contest or receive any prize, the Authorized Account Holder may be required to provide DraftKings with additional documentation and/or information to verify the identity of the Authorized Account Holder, and to provide proof that all eligibility requirements are met. In the event of a dispute as to the identity or eligibility of an Authorized Account Holder, DraftKings will, in its sole and absolute discretion, utilize certain information collected by DraftKings to assist in verifying the identity and/or eligibility of such Authorized Account Holder.

Participation in each Contest must be made only as specified in the Terms of Use. Failure to comply with these Terms of Use will result in disqualification and, if applicable, prize forfeiture.

Where legal, both entrants and winner consent to the use of their name, voice, and likeness/photograph in and in connection with the development, production, distribution and/or exploitation of any Contest or the Website. Winners agree that from the date of notification by DraftKings of their status as a potential winner and continuing until such time when DraftKings informs them that they no longer need to do so that they will make themselves available to DraftKings for publicity, advertising, and promotion activities.

DraftKings reserves the right to move entrants from the Contests they have entered to substantially similar Contests in certain situations determined by DraftKings in its sole discretion.

### **CONTEST PRIZES AND PROMOTIONS**

Prizes will only be awarded if a Contest is run. We reserve the right to cancel Contests at any time. In the event of a cancellation, all entry fees will be refunded to the customer except as specifically provided in these Terms of Use.

Guaranteed prizes are offered in connection with some of the Contests offered by the Website. Each Contest or promotion is governed by its own set of official rules. We encourage you to read such Contest and promotions Rules before participating.

## **OTHER LEGAL RESTRICTIONS**

### **CONTEST OF SKILL**

Contests offered on the Website are contests of skill. Winners are determined by the objective criteria described in the Contest deadline, roster, Rules, scoring, and any other applicable documentation associated with the Contest. From all entries received for each Contest, winners are determined by the individuals who use their skill and knowledge of relevant sports information and fantasy sports rules to accumulate the most points according to the corresponding scoring rules. The Website and Contests may not be used for any form of illicit gambling.

### **CONTEST STATISTICS AND LIVE SCORING**

To the extent that we offer 'live' statistics during gameplay, all 'live' statistics and other information provided through the DraftKings Website and related information sources are unofficial. Live sports statistics and their respective components are offered for informational and/or entertainment purposes only and are not used to determine the results of our Contests. While DraftKings and the third parties used to provide the DraftKings Services use reasonable efforts to include accurate and up-to-date information, neither DraftKings nor its third party providers warrant or make any representations of any kind with respect to the information provided through the DraftKings Website and related information sources. DraftKings and its third party providers shall not be responsible or liable for the accuracy, usefulness, or availability of any information transmitted or made available via the DraftKings Website and related information sources, and shall not be responsible or liable for any error or omissions in that information.

### **CONTEST RESULTS**

Contest results and prize calculations are based on the final statistics and scoring results at the completion of the last professional sports game of each individual Contest. Once Contest results are reviewed and graded, prizes are awarded. The scoring results of a Contest will not be changed regardless of any official statistics or scoring adjustments made by the leagues at later times or dates, except in DraftKings' sole discretion.

DraftKings reserves the right, in its sole and absolute discretion, to deny any contestant the ability to participate in head-to-head contests for any reason whatsoever. Further, DraftKings may, in its sole and absolute discretion, invalidate any head-to-head contest result for the purposes of preventing abusive and/or any unfair or potentially unlawful activity, or in the event that there is a risk of any such abusive, illegal, or unfair activity.

## **PRIZES**

At the conclusion of each Contest, prizes will be awarded by 12:00 NOON EST on the following day except in circumstances where technical failure or other reasons prevent such timely payout. Contest prizes are listed in our prize table list. Prizes won are added to the winning participants account balance. In the event of a tie, prizes are divided evenly amongst the participants that have tied.

### **PRIZE TABLES**

Contest prize payouts will be published with the creation of each new contest. DraftKings reserves the right, in its sole discretion, to cancel or suspend the contests (or any portion thereof) should virus, bugs, unauthorized human intervention, or other causes corrupt administration, security, fairness, integrity or proper operation of the contest (or any portion thereof) warrant doing so. Notification of such changes may be provided by DraftKings to its customers but will not be required.

### **PAYMENT AND WITHDRAWAL OF PRIZES**

Winners are posted on the Website.

Entrants may withdraw their cash prize awards as well as cash deposits by using the "Withdrawal" option on the Website. Entrants may be requested to complete an affidavit of eligibility and a liability/publicity release (unless

prohibited by law) and/or appropriate tax forms and forms of identification including but not limited to a Driver's License, Proof of Residence, and/or any information relating to payment/deposit accounts as reasonably requested by DraftKings in order to complete the withdrawal of prizes. Failure to comply with this requirement may result in disqualification and forfeiture of any prizes. Disqualification or forfeiture of any prizes may also occur if it is determined any such entrant did not comply with these Terms of Use in any manner.

Checks for withdrawal requests are processed within 14 business days, and are sent via U.S. Mail. Promotional deposits, credits, and other bonuses may not be withdrawn from a DraftKings account unless appropriate terms of the promotion are achieved first by the user.

All taxes associated with the receipt of any prize are the sole responsibility of the winner. In the event that the awarding of any prizes to winners of Contests is challenged by any legal authority, DraftKings reserves the right in its sole discretion to determine whether or not to award such prizes.

No substitution or transfer of prize is permitted, except that DraftKings reserves the right to substitute a prize of equal value or greater if the advertised prize is unavailable. All prizes are awarded "as is" and without warranty of any kind, express or implied (including, without limitation, any implied warranty of merchantability for a particular purpose).

Any withdrawal requests, after approved by DraftKings, will be credited back to the same credit card or method of payment used to deposit funds on the Website. DraftKings will only release withdrawals to a different credit card or other payment method other than that which was used to make deposit(s) after the aggregate amount of such deposit(s) has already been released back to the credit card(s) or payment method(s) used for the deposit(s).

## **TERMINATION AND EFFECT OF TERMINATION**

In addition to any other legal or equitable remedy, DraftKings may, without prior notice, immediately revoke any or all of your rights granted hereunder. In such event, you will immediately cease all access to and use of the DraftKings Website. DraftKings may revoke any password(s) and/or account identification issued to you and deny you access to and use of the Website. Any such action shall not affect any rights and obligations arising prior thereto. All provisions of the Terms of Use which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

## **DISCLAIMER OF WARRANTIES**

THE WEBSITE, INCLUDING, WITHOUT LIMITATION, ALL CONTENT, SOFTWARE, AND FUNCTIONS MADE AVAILABLE ON OR ACCESSED THROUGH OR SENT FROM THE WEBSITE, ARE PROVIDED "AS IS," "AS AVAILABLE," AND "WITH ALL FAULTS." TO THE FULLEST EXTENT PERMISSIBLE BY LAW, THE COMPANY AND ITS PARENTS, SUBSIDIARIES AND AFFILIATES MAKE NO REPRESENTATION OR WARRANTIES OR ENDORSEMENTS OF ANY KIND WHATSOEVER (EXPRESS OR IMPLIED) ABOUT: (A) THE WEBSITE; (B) THE CONTENT AND SOFTWARE ON AND PROVIDED THROUGH THE WEBSITE; (C) THE FUNCTIONS MADE ACCESSIBLE ON OR ACCESSED THROUGH THE WEBSITE; (D) THE MESSAGES AND INFORMATION SENT FROM THE WEBSITE BY USERS; (E) ANY PRODUCTS OR SERVICES OFFERED VIA THE WEBSITE OR HYPERTEXT LINKS TO THIRD PARTIES; AND/OR (F) SECURITY ASSOCIATED WITH THE TRANSMISSION OF SENSITIVE INFORMATION THROUGH THE WEBSITE OR ANY LINKED SITE. THE COMPANY DOES NOT WARRANT THAT THE WEBSITE, ANY OF THE WEBSITES' FUNCTIONS OR ANY CONTENT CONTAINED THEREIN WILL BE UNINTERRUPTED OR ERROR-FREE; THAT DEFECTS WILL BE CORRECTED; OR THAT THE WEBSITES OR THE SERVERS THAT MAKES THEM AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

THE COMPANY DOES NOT WARRANT THAT YOUR ACTIVITIES OR USE OF THE WEBSITE IS LAWFUL IN ANY PARTICULAR JURISDICTION AND, IN ANY EVENT, THE COMPANY SPECIFICALLY DISCLAIMS SUCH WARRANTIES. YOU UNDERSTAND THAT BY USING ANY OF THE FEATURES OF THE WEBSITE, YOU ACT AT YOUR OWN RISK, AND YOU REPRESENT AND WARRANT THAT YOUR ACTIVITIES ARE LAWFUL IN EVERY JURISDICTION WHERE YOU ACCESS OR USE THE WEBSITE OR THE CONTENT. FURTHER, THE COMPANY AND ITS PARENTS, SUBSIDIARIES AND AFFILIATES DISCLAIM ANY EXPRESS OR IMPLIED WARRANTIES

INCLUDING, WITHOUT LIMITATION, NONINFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND TITLE.

THE COMPANY, ITS PARENTS, SUBSIDIARIES AND AFFILIATES, AND THE DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER REPRESENTATIVES OF EACH OF THEM, SHALL NOT BE LIABLE FOR THE USE OF THE WEBSITE INCLUDING, WITHOUT LIMITATION, THE CONTENT AND ANY ERRORS CONTAINED THEREIN. SOME JURISDICTIONS LIMIT OR DO NOT ALLOW THE DISCLAIMER OF IMPLIED OR OTHER WARRANTIES SO THE ABOVE DISCLAIMER MAY NOT APPLY TO THE EXTENT SUCH JURISDICTION'S LAW IS APPLICABLE TO THIS AGREEMENT.

### **LIMITATION OF LIABILITY**

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You represent and warrant that you have all rights necessary to grant to DraftKings the license above and that none of your User Submissions are defamatory, violate any rights of third parties (including intellectual property rights or rights of publicity or privacy), or violate applicable law.

## ARBITRATION, CONSENT TO JURISDICTION IN MASSACHUSETTS, ATTORNEY'S FEES



Any and all disputes, claims or controversies arising out of or relating to this Agreement, the breach thereof, or any use of the Website (including all commercial transactions conducted through the Website) ("Claims"), except for claims filed in a small claims court that proceed on an individual (non-class, non-representative) basis, shall be settled by binding arbitration before a single arbitrator appointed by the American Arbitration Association ("AAA") in accordance with its then governing rules and procedures, including the Supplementary Procedures for Consumer-Related Disputes, where applicable. In agreeing to arbitrate all Claims, you and DraftKings waive all rights to a trial by jury in any action or proceeding involving any Claim. The arbitration shall be held in Suffolk County, Massachusetts, and judgment on the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. This arbitration undertaking is made pursuant to and in connection with a transaction involving interstate commerce, and shall be governed by and construed and interpreted in accordance with the Federal Arbitration Act at 9 U.S.C. Section 1, et seq. This arbitration provision shall survive termination of this Agreement. Subject to the limitations set forth below, the arbitrator shall have authority to award legal and equitable relief available in the courts of the Commonwealth of Massachusetts, provided that:

The arbitrator shall not have authority to award punitive damages; and

Any and all claims shall be arbitrated on an individual basis only, and shall not be consolidated or joined with or in any arbitration or other proceeding involving a Claim of any other party. You and DraftKings agree that the arbitrator shall have no authority to arbitrate any Claim as a class action or in any other form other than on an individual basis.

For any Claims that are not subject to arbitration: (a) the exclusive jurisdiction and venue for proceedings involving Claims shall be the courts of competent jurisdiction sitting within Suffolk County, Massachusetts (the "Forum"), and the parties hereby waive any argument that any such court does not have personal jurisdiction or that the Forum is not appropriate or convenient; (b) you and DraftKings waive any and all rights to trial by jury with respect to any Claims.

In the event that either party initiates a proceeding involving any Claim other than an arbitration in accordance with this Section, or initiates a proceeding involving a Claim under this Section other than in the Forum, the other party shall recover all attorneys' fees and expenses reasonably incurred in enforcing this Agreement to arbitrate and the Forum to which the parties have herein agreed.

## MISCELLANEOUS

These Terms of Use shall be governed by the internal substantive laws of the Commonwealth of Massachusetts, without respect to its conflict of laws principles. Any claim or dispute between you and DraftKings that arises in whole or in part from the Terms of Use, the Website or any Contest shall be decided exclusively by a court of competent jurisdiction located in Suffolk County, Massachusetts.

Nothing in the Terms of Use shall create or confer any rights or other benefits in favor of any third parties except as specifically provided herein. By participating in any Contest on the Website, you agree to indemnify, protect, defend and hold harmless DK, its parents, subsidiaries, affiliates and divisions, and their respective directors, officers, employees, agents and representatives (the "DK Entities"), from and against any and all third party claims, liabilities, losses, damages, injuries, demands, actions, causes of action, suits, proceedings, judgments and expenses, including reasonable attorneys' fees, court costs and other legal expenses including, without limitation, those costs incurred at the trial and appellate levels and in any bankruptcy, reorganization, insolvency or other similar proceedings, and any other legal expenses (collectively, "Claims") arising from or connected with your use of the Website, any payment methods used, any funding of your account, and/or your participation in any Contest. The Website may contain links to third party websites that are not owned or controlled by DraftKings. DraftKings has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party websites. In addition, DraftKings will not and cannot censor or edit the content of any third-party site. By using the Website, you expressly relieve DraftKings from any and all liability arising from your use of any third-party website. Accordingly, we encourage you to be aware when you leave the Website and to read the terms and conditions and privacy policy of each other website that you visit.

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No waiver of any term of these Terms of Use shall be deemed a further or continuing waiver of such term or any other term, and DraftKings' failure to assert any right or provision under these Terms of Use shall not constitute a waiver of such right or provision.

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### **MOBILE APPLICATION**

These Terms of Use shall also apply to the use of the DraftKings Mobile Application. These Terms of Use are intended to be in addition to the End User License Agreement (found here: <https://www.apple.com/legal/internet-services/itunes/appstore/dev/stdeula/>) for the Mobile Application, and to the extent any of these Terms of Use conflict with the End User License Agreement, these Terms of Use shall be deemed to apply and the conflicting provision in the End User License Agreement shall not be applicable. Any reference to the Website in these Terms of Use shall also be deemed to include the Mobile Application.

# EXHIBIT B

NAME	VALUE
User ID	937854
Username	[REDACTED]
Fraud Score	0
Fraud Today Score	0
Password	[REDACTED]
First Name	cory
Last Name	hemrich
Status	Unverified
Address Count	1
Visitor ID	36054001
Email Address	[REDACTED]
Credit Cards	1
Create Date	2014-10-07 03:08
First Deposit Date	2014-12-28 12:18
Last Deposit Date	2014-12-28 12:18
Campaign ID	1026
Campaign Name	App_Mobile

# EXHIBIT C

NAME	VALUE
User ID	1576517
Username	
Fraud Score	0
Fraud Today Score	0
Password	
First Name	Cooper
Last Name	Ogborn
Status	Unverified
Address Count	1
Visitor ID	57285983
Email Address	
Credit Cards	1
Create Date	2015-02-01 22:26
First Deposit Date	2015-02-01 22:28
Last Deposit Date	2015-02-01 22:28
Campaign ID	2
Campaign Name	Rotogrinders Default